

R. E. AGEE AND MARGARET E. AGEE

JUNE 19, 1951.—Committed to the Committee of the Whole House and ordered to be printed

Mr. JONAS, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 1485]

The Committee on the Judiciary, to whom was referred the bill (H. R. 1485) for the relief of R. E. Agee and Margaret E. Agee, having considered the same, report favorably thereon with amendment and recommend that the bill, as amended, do pass.

The amendment is as follows:

Page 1, line 6, strike out "\$28,749.42", and insert "\$7,500".

The purpose of the proposed legislation is to pay the sum of \$7,500 to R. E. Agee and Margaret E. Agee, of Orland, Calif. The payment of said sum shall be in full settlement of all their claims against the United States arising out of the destruction and depreciation of their livestock, improvements, and equipment on San Nicolas Island, Calif., as a result of Government construction of military installation on the island during 1942 and 1943, and Government termination, on March 19, 1943, of the revocable permit under which they had occupied the island for grazing purposes since June 11, 1934.

STATEMENT OF FACTS

San Nicolas Island, approximately $9\frac{1}{2}$ miles long and about 3 miles wide, is located about 70 miles southwest of Los Angeles, Calif. Ownership of the island lies in the United States. Prior to the outbreak of World War II, the Navy Department maintained an emergency landing field, together with various instruments for meteorological purposes, on the southeasterly tip of the island. The remainder of the island was utilized as a sheep ranch by private parties, under a permit from the Navy Department, which permit was revocable at the will of the Department. Agee and his wife entered into a partnership with one Elliott and his wife and began operations on the island in 1930. At that time they bought stock, equipment,

and improvements from one Robert L. Brooks, who was then operating a sheep ranch under an arrangement with the prior tenant, named Vail, who had the original permit from the Government. Subsequent to that date the Agees and Elliotts acquired a revocable permit for grazing purposes in their own right from the Navy Department on June 11, 1934. No rent was reserved in the permit but the tenants were required to perform certain acts in connection with observing the equipment owned and operated by the Government on the island.

In 1939 the Agees purchased the interest of the others for \$11,000.

Early in 1942 the Army Air Force selected the San Nicolas Island as a site for the installation of an aircraft warning station. On November 9, 1942, the Navy Department granted permission to the War Department to occupy and use the entire island for an airfield, subject to the revocable permit issued on June 11, 1934, and in accordance with the terms agreed upon by the War Department and the Agees. In 1943 construction work was so far advanced that it called for the removal of the Agees' livestock. The War Department advised the Navy Department that the continued presence of sheep on the island would interfere with the construction, etc., and requested that the revocable permit be canceled. The War Department agreed to assist the Agees in removing their livestock and other property on construction company barges.

On February 27, 1943, the Agees wrote a letter to the Los Angeles real-estate suboffice of the South Pacific division engineer, in which they described the conditions prevailing on the island, and concluded by saying that to continue grazing on the island would be unprofitable, and for these reasons they had decided to move off the island, at least for the duration of the war. Their letter was forwarded to the Navy Department, who accepted the voluntary termination of the permit, and on March 19 notified the Agees that the permit was revoked. The notice also requested the removal of all personal property by June 30, 1943. Removal was begun by the tenant farmers, but was not completed until the end of July 1943.

Predicated on the foregoing facts, the Agees filed a claim against the Government on December 10, 1945, for \$38,749.42. They contended that the losses they sustained were: Improvements which necessarily had to be abandoned; sheep losses by death and unseasonal breeding; diminished rates on flock due to weight losses; loss of income while trying to reestablish themselves subsequent to removal from the island, based on income for 1942.

The grazing permit granted August 1, 1934, contains this clause:

This permit shall be indeterminate and revocable at any time at the option and discretion of the Secretary of the Navy.

The permit further provides that in the event the Navy Department finds it necessary to require the relocation of any of the existing buildings or other improvements, the permittees shall at their own expense relocate such buildings and improvements. The permit also calls for the removal within a reasonable time, at permittees' expense, of their property, and to restore the Government land as near as practicable to its original condition. Also the permittees acquire no permanent interest in the land of the United States. The release further provides that—

The United States shall not under or by reason of this permit or by reason of anything contained herein incur any expense or liability whatever that may be

occasioned by injury to the property of the permittees by any project undertaken pursuant to law, and the said permittees will hold and save the Government harmless from and against any and all claims of any nature or kind that may arise from anything connected with or growing out of this permit or attributable to any act of the United States, its officers or agents.

It may be noted that from time to time the claimants switched from their original premise. In the instant claim it is contended that losses were sustained due to the Government failing to give the permittees reasonable and sufficient time to move their property. On February 21, 1947, both the War and Navy Departments notified the claimant that the application for damage was denied. On March 4, 1949, the Accounting Office disapproved the claim which was submitted through the attorney for the permittees.

In the previous bill filed under H. R. 8068, the amount claimed was \$38,000 plus. The present bill has reduced that sum by \$10,000.

On July 6, 1942, the Agees evaluated their holdings at \$33,340. This figure was submitted for the purpose of obtaining a loan. It is also conceded that the Agees realized \$13,143.48 from the sale of fencing, building material, equipment, and livestock.

The Government has appraised the holdings and property of the claimant at \$5,000. This figure was placed on the improvements, buildings, etc., in contrast to the figures of \$12,000 which was the value placed on their property by the claimants in the application for a loan.

The foregoing substantially represents the facts as nearly as they could be ascertained from the written documents on file. It is apparent from reading the documents that the claimants are endeavoring to accelerate their claim by every conceivable means, including that of unliquidated damages, such as potential loss of profits and diminishing loss on returns of livestock through loss of weight and loss of potential income, all of which is based on a premise which is inherently speculative. The Government, on the other hand, is undoubtedly placing a value on the property which has been minimized to a figure entirely incompatible with the amount set forth by the claimants.

The test of this claim is whether the occupants had reasonable notice and were given reasonable opportunity to remove their property with safety from the island. The conditions set forth in the permit clearly show that they assumed certain hazards and that they waived liability for certain losses. It is obvious that while the United States was at war, that little consideration would be given to the convenience of tenants where it was so apparent that defense precautions had to be taken on the island in question. The committee is inclined to think that the claimants were in a class which is commonly termed "war evacuees due to a danger zone." Instances of this kind have always been met by the Government with payment of reasonable compensation—that is in case the Government for safety or defense purposes saw fit to speedily take over certain properties for that purpose.

In the instant claim, it is difficult to determine in fixed dollars and cents what, if any, loss the claimants sustained. It is conceded, however, by both sides that the island was converted into an airfield and that the improvements were destroyed and the livestock evacuated. Undoubtedly the tenants sustained some loss through this procedure. However, the only duty that the law invoked upon the United States Government was that the tenants receive reasonable notice to move and that they have a reasonable time to do so.

In connection with this claim it is concluded that the tenants did not have a reasonable time to move. They were severely handicapped due to lack of transportation because they were located on an island 70 miles away from the mainland. The claim, however, that has been filed is entirely out of line with what could be considered as just and fair compensation for the losses the claimants contend they sustained.

The committee recommends that the bill be amended for the purpose of reducing the claim from \$28,749.42 to \$7,500, and upon compliance with such order the bill calling for the payment of \$7,500 be approved.

DEPARTMENT OF THE NAVY,
OFFICE OF THE JUDGE ADVOCATE GENERAL,
Washington, D. C., July 5, 1950.

Hon. EMANUEL CELLER,
Chairman of the Committee on the Judiciary,
House of Representatives.

DEAR MR. CHAIRMAN: With reference to the bill H. R. 8068 for the relief of R. E. Agee and Margaret E. Agee, the Navy Department submits the following report.

The purpose of the bill is to appropriate the sum of \$28,749.42, as payment to R. E. Agee and Margaret E. Agee in full settlement of all claims against the United States arising out of the destruction and depreciation of their livestock, improvements, and equipment on San Nicolas Island, Calif., as the result of Government construction of military installations on the island during 1942 and 1943, and Government termination, on March 19, 1943, of the revocable permit under which they had occupied the island for grazing purposes since June 11, 1934.

San Nicolas Island, approximately 9½ miles long by 3 miles wide, is located about 70 miles southwest of Los Angeles, Calif., and, politically, is considered a part of Ventura County, Calif. Ownership of the island lies in the United States, and the island was, by authority granted in Executive Order No. 6009 of January 31, 1933, under the control and jurisdiction of the Navy Department from that date, except that from November 12, 1942, until March 20, 1944, the War Department shared or controlled jurisdiction under permission granted by the Navy Department. Prior to the outbreak of the war, the Navy Department maintained an emergency landing field, together with various instruments for meteorological purposes, on the southeasterly tip of the island. The remainder of the island was utilized as a sheep ranch by private individuals under revocable permit from the Navy Department, the last of such permittees being the Agees.

The Agees, in partnership with Lyman P. Elliott and B. Edna Elliott, parents of Mrs. Agee, began operations on San Nicolas Island in 1930, at which time they purchased all the stock, equipment, and improvements of Robert L. Brooks, who was operating a sheep ranch under an arrangement with the then permittee, E. N. Vail. The Agees and the Elliotts acquired a revocable permit for grazing purposes in their own right from the Navy Department on June 11, 1934. No rent was reserved in the permit, but the permittees were required to perform certain acts in connection with the meteorological instruments and equipment, particularly the taking and reporting of readings and the reporting of equipment failure. The Agees purchased the interests of the Elliotts for \$11,000 on June 1, 1939, and thereafter continued in sole possession.

Early in 1942 the Army Air Forces selected San Nicolas Island as a site for the installation of an aircraft warning station. The War Department had previous to this, by permission of the Navy Department, engaged in certain activities on the island, including location of sites and access roads and construction of a wharf. On November 9, 1942, the Navy Department granted permission to the War Department to occupy and use the entire island for the construction of an airfield, and all facilities in connection therewith, subject to the revocable permit issued on June 11, 1934, modified in accordance with terms agreed upon by the War Department and the Agees.

Directives for the construction of an Army air base on the island were issued on October 22, 1942, and construction began on the radar station that fall under the Los Angeles real estate suboffice, South Pacific division engineer. By February 1943, construction was considerably advanced, and removal of the Agees' livestock became necessary and acute. Accordingly, the War Department ad-

vised the Navy Department that the continued presence of sheep on the island would interfere with construction and endanger the water supply, and requested that the revocable permit be canceled. At about the same time the War Department was making arrangements to assist the Agees in moving from the island. These arrangements, in which the Agees were consulted and participated, provided for the removal of livestock and other property on the return trips of construction company barges which were transporting building materials. Mr. Agee had stated to Army representatives that he was unable to obtain a boat under the war conditions; and that, even if a barge could be obtained, the extreme high costs would be ruinous.

On February 27, 1943, the Agees directed a letter to the Los Angeles real estate suboffice of the South Pacific division engineer, reading in part as follows:

"As a result of present war conditions, the Government is now making extensive construction on this island, which, of course, materially reduces the grazing area, and would require several miles of fencing to segregate the sheep. The sheep are somewhat wild, and are constantly running when frightened, which reduces the fattening for market. Hired help is hard to get. Boat transportation is both difficult and very costly. Therefore, to continue grazing on the island would be unprofitable, and for these reasons we have decided to move off of the island, at least during the duration of the war."

This letter was forwarded to the Navy Department which accepted the voluntary termination of the permit and notified the Agees by letter dated March 19, 1943, that the permit was revoked. The notice of revocation also requested that all the personal property of the Agees be removed by June 30, 1943. The permit given to the War Department was, on March 20, 1943, enlarged by removing therefrom reference to another permittee. Thereafter, the Agees removed from the island, but removal was not completed until the end of July 1943, a month after the requested date of removal.

As a result of the foregoing circumstances which resulted in revocation of the grazing permit and their removal from the island, the Agees filed a claim on December 10, 1945, against the Government for \$38,749.42. The losses alleged included: (1) Improvements which were necessarily abandoned due to lack of transportation; (2) sheep losses by death and unseasonal breeding caused by destruction of segregation fences; (3) diminished returns on flock due to weight losses; (4) loss of income, while trying to reestablish themselves subsequent to removal from the island, based on income for 1942. The Agees also took the position that the loss could have been prevented had the permit been revoked in 1942 and removal effected at that time.

An examination of the revocable permit discloses the following pertinent provisions:

"Now, therefore, in consideration of the premises the Secretary of the Navy hereby grants to R. E. Agee and L. P. Elliott permission to occupy the Navy reservation, San Nicolas Island, Calif., for grazing purposes from August 1, 1934."

"1. This permit shall be indeterminate and revocable at any time at the option and discretion of the Secretary of the Navy."

"5. In the event the Navy Department shall find it necessary or advisable at any time to require the relocation of any of the existing buildings or other improvements of the permittees, said permittees shall at their own expense and within reasonable time, relocate such buildings and other improvements as may be required by the Navy Department."

"6. In case of the termination of this permit, the permittees at their sole expense and within a reasonable time after receipt of notice thereof will remove their property and restore the said Government land as nearly as practicable to its original condition if so requested by the United States."

"8. The permittees are not to be considered as acquiring hereunder any permanent interest whatever in the land if the United States."

"14. The United States shall not under or by reason of this permit or by reason of anything contained herein incur any expense or liability whatever that may be occasioned by injury to the property of the permittees by any project undertaken pursuant to law, and the said permittees will hold and save the Government harmless from and against any and all claims of any nature or kind that may arise from anything connected with or growing out of this permit or attributable to any act of the United States, its officers or agents."

The merest perusal of the foregoing extracts from the permit indicate immediately that the Agees had no vested interest whatever in the Government-owned land capable of injury by trespass by the Government. Viewed from the most favorable interpretation, they were merely permitted to occupy the island for

the purpose of raising sheep and were subject to immediate divestment of this bare permission at the election of the Government at any time and without prior notice. Further, they could be required at any time to relocate any of their improvements, to remove them from the island, or to replace the land in the condition it was in originally. As to the matter of reasonable time to effect removal, it should be noted that the Agees, by their letter aforesaid, had stated they were prepared to remove from the island during the months of May and June 1943. The Navy Department letter revoking the permit was dated March 19, 1943, and requested removal by June 30, 1943, the date named by the Agees themselves. Actually, removal was not completed until the end of July 1943. Thus, an additional month was consumed, resulting in a total period of approximately 4½ months for the Agees to vacate the island, certainly a reasonable time. Furthermore, the Government was most cooperative in securing transportation at economical rates.

On the basis of its investigation, recited in pertinent parts in the foregoing, the War Department determined that no compensable damage was due the Agees upon any theory either sounding in tort or predicated upon a contract; but, nevertheless, submitted the claim to the Navy Department for final determination by virtue of the fact that the alleged losses resulted principally from cancellation of the revocable permit. After a careful consideration of the claim, the Navy Department concurred in the War Department determination and notified the Agees on February 21, 1947, that the claim was denied. The Agees were further informed, however, that pursuant to section 236, Revised Statutes (31 U. S. C. 71), a claim could be filed with the General Accounting Office.

It appears that the Agees, acting through their attorney, submitted their claim to the General Accounting Office, and that it was disapproved on March 4, 1949.

The total amount sought as relief in H. R. 8068 has been reduced \$10,000 from the amount originally claimed, and this reduction presumably reflects the vacating of that portion of the claim which related to lost profits on operations following their removal from the island. Even so, the amount sought still appears excessive, as is obvious from a comparison of that figure, \$28,749.42, and the sum of \$33,340, the total value of the assets, as evaluated by the Agees on July 6, 1942, when they applied for a loan from the Los Angeles Production Credit Co. The Agees stated in their claim that they had realized approximately \$13,143.48 from the sale of fencing, building material, equipment, and livestock, although they sought to reduce this figure approximately \$2,649.90 for transportation, feed, and labor costs, which, it is pointed out, would necessarily have resulted in any event of removal, or, for that matter, sale. The claim listed miscellaneous equipment and improvements, including buildings, pier, fencing, at \$12,000, though these same items were listed at only \$10,330 in the application for a loan, and an additional year of depreciation should have been deducted. Included in this latter figure was \$9,000 for improvements, etc., but a Government appraiser at about the same time had set a maximum value of \$5,000 for these as the depreciated reproduction costs thereof. The appraiser stated further that removal of these improvements would be a practical impossibility.

The Navy Department believes that any and all losses claimed as arising from the revocation of the permit granted to the Agees must necessarily have been contemplated from the revocable nature thereof and the fact that improvements would have to be abandoned or removed at any time. The Navy Department, therefore, recommends against enactment of subject bill.

The Navy Department has been advised by the Bureau of the Budget that there is no objection to the submission of this report to the Congress.

For the Secretary of the Navy.

Respectfully yours,

E. E. Woods,

Captain, United States Navy, Acting Judge Advocate General.

FIRST NATIONAL BANK BUILDING,
Chico, Calif., October 19, 1949.

Re R. E. and Margaret Agee.

Mr. HERBERT SCUDDER, M. C.,
House Office Building, Washington, D. C.

DEAR MR. SCUDDER: I have been endeavoring to obtain a settlement on the claim of R. E. and Margaret Agee aggregating \$28,749.42, which represents a loss they sustained while tenants of the Government under a revocable permit

issued by the War Department on June 11, 1934, permitting them to occupy San Nicolas Island for agricultural and stock-raising purposes.

The claim was originally filed with the Navy Department and later with the General Accounting Office. No allowance of the claim was made in either instance and I am now submitting the claim to you with the hope that some action can be taken by Congress which will afford some relief to these people for the loss they sustained when the Navy Department took over San Nicolas Island for defense purposes in the early part of World War II.

For your information I am inclosing the following documents to which you will wish to refer:

Copy of revocable permit dated June 11, 1934.

Claimants' signed statement of facts.

List of claimants' references.

Copy of joint statement of claimants made before Jacob S. Greenfield, claims examiner, Leasing and Claims Branch of the Navy Department.

Copy of settlement certificate from General Accounting Office dated March 4, 1949.

I fully realize that these people were occupying the island under a revocable permit and that by reason thereof they assumed certain hazards which eventually contributed to the loss they sustained; if you will note, though, a large portion of the claim is based upon the loss of livestock which resulted from unseasonal breeding of the sheep occasioned by the destruction of fences during the conversion of the island for a naval base. In the ordinary course of events the tenants would have had an opportunity to remove their property in a reasonable time with safety but because of emergency conditions this was impossible, and much of their property was destroyed as well as the loss sustained by unseasonal breeding of the sheep.

I will be grateful if you will consider this matter from the standpoint of a compensable claim, if possible, and take such steps as may be necessary to present the matter to Congress, which, I understand, is possible in certain instances, although I do not know whether this claim falls within that category.

I might state that I had some correspondence with Mr. Clarence F. Lea on this matter and also discussed the same with him personally and it was his suggestion that after the claim had been through the Navy Department and the General Accounting Office that it then be presented to him or his successor.

I thank you for any courtesy you may extend to my clients herein.

May I wish you continued success in your work and also may I convey my respects to Miss Mildred Martin.

Respectfully yours,

COYLE E. BYBEE.

REVOCABLE PERMIT

Whereas, by an instrument of revocable license dated July 9, 1919, issued by the Secretary of Commerce, and renewals thereof, one E. N. Vail was given permission to use and occupy for grazing purposes the site of the San Nicolas Light-house Reservation, Calif.; that it at present under the control and jurisdiction of the Secretary of the Navy; and

Whereas E. N. Vail disposed of his sheep, houses, equipment, and other improvements on said Government reservation to R. E. Agee and L. P. Elliott, who are now, and for more than 5 years past have been, occupying said Government reservation; and

Whereas the term of occupancy expires July 31, 1934, and the said R. E. Agee and L. P. Elliott have submitted application for permission to occupy the said Government reservation from and after August 1, 1934; and

Whereas the granting of said permission to the said R. E. Agee and L. P. Elliott under the conditions hereinafter enumerated is deemed to be in the public interests and would in no way interfere with the activities of the Navy on said reservation;

Now, therefore, in consideration of the premises, the Secretary of the Navy hereby grants to R. E. Agee and L. P. Elliott permission to occupy the naval reservation, San Nicolas Island, Calif., for grazing purposes from August 1, 1934.

This permit is granted subject to the following provisions and conditions:

1. This permit shall be indeterminate and revocable at any time at the option and discretion of the Secretary of the Navy.

2. The permittees, at their sole expense, will maintain the Government property in proper condition to the satisfaction of the United States or its duly authorized representative, and will conform to State and local regulations not in conflict with the requirements of the Federal Government.

3. The permittees agree that no portion of the Government reservation will be used in any manner whatsoever in connection with shellfishing or with culture in

shellfish, nor as a place of residence, either temporary or permanent, of any person or persons engaged in such pursuits.

4. No additional structures or other improvements will be placed on the Government reservation without the prior approval of the Secretary of the Navy or the duly authorized representative of the Navy Department, and the permittees shall not make any excavations other than for necessary building purposes when approved by the Secretary of the Navy or the duly authorized representative of the Navy Department, and no soil, rock, or other material whatsoever shall be removed from the Government reservation, nor shall any trees or standing timber thereon be cut down.

5. In the event the Navy Department shall find it necessary or advisable at any time to require the relocation of any of the existing buildings or other improvements of the permittees, said permittees shall, at their own expense and within a reasonable time, relocate such buildings and other improvements as may be required by the Navy Department.

6. In case of the termination of this permit, the permittees at their sole expense and within a reasonable time after receipt of notice thereof, will remove their property and restore the said Government land as nearly as practicable to its original condition if so requested by the United States. In case of failure any expense incurred by the United States after the termination of this permit in removing any of the property of the permittees and in restoring to its original condition the Government's land covered by this permit will be reimbursed to the United States by said permittees upon demand.

7. This permit is restricted and shall not be assigned or succeeded to in any manner, except by operation of law, without the consent in writing obtained beforehand of the United States, and in case of such assignment or succession so consented to, all of the foregoing provisions and conditions shall apply to such substituted permittee.

8. The permittees are not to be considered as acquiring hereunder any permanent interest whatever in the land of the United States.

9. The United States reserves the right to take such timber, rock, sand, and other materials as it may require for construction purposes.

10. The permittees agree to take care of, and furnish information relating to, meteorological instruments at present installed or may hereafter be installed on the said naval reservation in such manner as may be required by the commandant, Eleventh Naval District, who is hereby designated and empowered to act as the representative of the United States in all matters in connection with this permit requiring the approval or action of the Secretary of the Navy.

11. The permittees further agree to keep the existing emergency landing field on the Government reservation free of obstructions dangerous to aircraft, to keep the boundary and center markers reasonably free of dirt and other soiling, and to replace or clear the wind indicator if it carries away or fails to watch.

12. As there is but one beach location in the vicinity of the ranch houses where a seaplane or amphibian can land with safety, the permittees agree to keep the location clear of obstructions, to signal aircraft in at this point, render such assistance as is necessary and possible, and in case the Navy establishes range markers or targets at this point, said permittees agree to keep them in position.

13. The permittees also agree, in the event of a plane crash on or in the vicinity of the landing field, to render first aid and/or other assistance to personnel, to render any assistance necessary in preparing the plane to resume flight, and in an emergency agree to furnish to Navy personnel food and lodging, as may be within their capacity, at fair and reasonable prices.

14. The United States shall not under or by reason of this permit or by reason of anything contained herein incur any expense or liability whatever that may be occasioned by injury to property of the permittees by any project undertaken pursuant to law, and the said permittees will hold and save the Government harmless from any against any and all claims of any nature or kind that may arise from anything connected with or growing out of this permit not attributable to any act of the United States, its officers, or agents.

In witness whereof, I have hereunto set my hand and affixed the official seal of the Navy Department this 11th day of June 1934.

H. L. ROOSEVELT,
Acting Secretary of the Navy.

This permit is also executed by R. E. Agee and L. P. Elliott in acknowledgment of the acceptance of the terms and conditions therein set forth.

[SEAL]
[SEAL]

LYMAN P. ELLIOTT.
R. E. AGEE.

STATEMENT OF FACTS AND CIRCUMSTANCES ATTENDING THE DAMAGE SUSTAINED BY R. E. AGEE AND MARGARET AGEE, TENANTS ON SAN NICOLAS ISLAND

The claimants occupied San Nicolas Island as tenants of the United States Government under revocable permit issued by the War Department under date of June 11, 1934; the permittees being R. E. Agee and L. P. Elliott. Margaret E. Agee is the wife of R. E. Agee. No claim is made on behalf of L. P. Elliott as he was not an active tenant during the time herein referred to, he having sold his interest to claimants in 1939.

The aforesaid permit was revoked on March 19, 1943, by reason of the request of the Government and the construction of certain installations and carrying on of certain activities for war purposes by the War Department and by reason of the then national emergency.

Prior to the actual date said permit was revoked, and on February 27, 1943, the claimants addressed a letter to the War Department, Division of Engineers, 621 South Hope Street, Los Angeles, Calif., stating that by reason of the activity then being carried on by the Government on the island the grazing area was materially reduced, several miles of fencing would be required to segregate their sheep, and that the sheep were becoming wild and the constant disturbance caused a loss of fat; that by reason of this situation and the continued difficulty in obtaining boat transportation they would be required to vacate.

As the result of the activities of the contractor, Clyde Woods Construction Co., and various subcontractors, the fencing erected on San Nicolas Island was almost wholly destroyed, resulting in much loss to them through unseasonal breeding of sheep which were caused to intermingle after the destruction of fencing. In addition thereto they lost a large number of sheep by death.

For the purpose of arriving at the amount of the net loss sustained by claimants, the following data is submitted:

ASSETS	
Improvements:	
Buildings.....	\$7,000.00
Pier.....	2,000.00
Fencing.....	2,000.00
Miscellaneous equipment.....	1,000.00
	<hr/> \$12,000.00
Livestock:	
2,000 ewes.....	\$24,000.00
40 rams (black).....	2,400.00
28 rams (white face).....	600.00
	<hr/> 27,000.00
Total assets.....	<hr/> 39,000.00
SALVAGE	
Sale of fencing, building material, and equipment.....	\$1,134.00
Less transportation cost.....	243.00
	<hr/> 891.00
Sale of livestock.....	11,766.48
Less cost of feed and labor.....	2,406.90
	<hr/> 9,359.58
Total.....	<hr/> 10,250.58
Net loss.....	<hr/> 28,749.42

It is the contention of the claimants that if the Government had not permitted the construction work to be commenced prior to the revocation of the permit and afforded them an opportunity to remove their property from the island, their loss would have been greatly reduced. Particularly, is this true of all livestock and other personal property. Their investment in buildings was practically a total loss as there was little salvage due to lack of transportation facilities to the mainland and the extremely high costs thereof.

Further, by reason of the loss sustained by the claimants in the short period of time their opportunity for recoupment was materially affected, resulting in a loss of income in 1944. This loss amounted to the sum of \$10,000 and is based upon

1942 operations as shown by claimants' 1944 income-tax return on file in the San Francisco office of the Treasury Department, Income Tax Division.

Based on the foregoing, the total amount of this claim is the sum of \$38,749.42.

R. E. AGEE.
MARGARET AGEE.

STATE OF CALIFORNIA,

County of Butte, ss:

R. E. Agee and Margaret Agee, being each first duly sworn, depose and say:

That we are the claimants named in and who made the foregoing claim and statement of facts; that we have read said claim and statement of facts and know the contents thereof; that the same is true of our own knowledge, except as to those matters which are therein stated on information and belief, and as to those matters we believe it to be true.

R. E. AGEE.
MARGARET AGEE.

Subscribed and sworn to before me this 16th day of August 1948.

[SEAL]

COYLE E. BYBEE,
Notary Public, Butte County, Calif.

My commission expires July 14, 1949.

